



October 15, 2018

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: *Ex Parte* Communication: WC Docket Nos. 10-90, 14-58, 07-135, 17-144, 16-143, and 05-25, and CC Docket 01-92

Dear Ms. Dortch:

On October 11, 2018, Genny Morelli and the undersigned of ITTA met with Arielle Roth of the Office of Commissioner O’Rielly regarding the Notice of Proposed Rulemaking (NPRM) in WC Docket Nos. 10-90, 14-58, 07-135, and CC Docket 01-92,¹ and the draft Report and Order and Further Notices of Proposed Rulemaking in WC Docket Nos. 17-144, 16-143, and 05-25.²

During the discussions, we addressed various points raised in ITTA’s comments on the *Rate-of-Return Budget NPRM*.³ We also expressed general support of the recently issued Draft Business Data Services R&O and FNPRM, though we reiterated that rate-of-return carriers eligible to voluntarily elect to transition their business data services offerings out of rate-of-return regulation⁴ should be provided an annual transition opportunity,⁵ consistent with their longstanding ability to convert to price cap regulation at any time. The Draft Business Data Services R&O and FNPRM’s provision to eligible carriers of only a one-time opportunity to elect to move their business data services offerings out of rate-of-return regulation, however, in order “to discourage gaming opportunities,”⁶ is inconsistent with Commission precedent, where

¹ *Connect America Fund et al.*, Report and Order, Third Order on Reconsideration, and Notice of Proposed Rulemaking, FCC 18-29 (Mar. 23, 2018) (*Rate-of-Return Budget NPRM*).

² *Regulation of Business Data Services for Rate-of-Return Local Exchange Carriers, Business Data Services in an Internet Protocol Environment, Special Access for Price Cap Local Exchange Carriers*, Report and Order, Second Further Notice of Proposed Rulemaking, and Further Notice of Proposed Rulemaking, FCC-CIRC1810-06 (Public Draft Oct. 2, 2018) (Draft Business Data Services R&O and FNPRM).

³ See Comments of ITTA – The Voice of America’s Broadband Providers, WC Docket Nos. 10-90, 14-58, and 07-135, CC Docket No. 01-92 (May 25, 2018).

⁴ See Draft Business Data Services R&O and FNPRM at 2, para. 1 n.1.

⁵ See, e.g., Comments of ITTA and USTelecom, WC Docket No. 17-144, at 24 (June 18, 2018); ITTA – The Voice of America’s Broadband Providers and USTelecom – the Broadband Association, Petition for Rulemaking, WC Docket No. 17-144, Appx. at 1 (filed May 25, 2017) (proposed 47 CFR § 61.50(b)).

⁶ Draft Business Data Services R&O and FNPRM at 11, para. 23.

there has never been concern enunciated about gaming of going-in rates.⁷ In addition, to the extent that it is highly likely that the regulatory status of TDM transport will remain undetermined by March 1, 2019⁸ -- the deadline for eligible carriers currently in the NECA pool to notify NECA that they will not participate in the upcoming NECA traffic-sensitive tariff for their business data services offerings – or could be determined by then but with insufficient time for carriers to evaluate whether to remain in the NECA pool for their business data services offerings,⁹ a mere one-time election would force eligible carriers to whom the status of TDM transport could be “make-or-break” to make a decision without the benefit of essential information. Therefore, ITTA strongly urges the Commission to modify the Draft Business Data Services R&O and FNPRM to provide eligible carriers an annual transition opportunity, as ITTA and USTelecom have advocated since initiating this proceeding.¹⁰

Please do not hesitate to contact the undersigned with any questions regarding this submission.

Respectfully submitted,

/s/

Michael J. Jacobs
Vice President, Regulatory Affairs

cc: Arielle Roth

⁷ Notably, the Draft Business Data Services R&O and FNPRM does not cite any precedent for its one-sentence elaboration of its theory about purported gaming opportunities.

⁸ *See id.* at 55-57, Sec. V.B. (seeking comment on whether, and under what circumstances, the Commission should remove ex ante pricing regulation for electing carriers’ lower capacity TDM transport).

⁹ It is similarly unlikely that the status of TDM transport would be determined in time for eligible carriers’ May 1, 2019 deadline to decide whether to elect to transition their business data service offerings out of rate-of-return regulation.

¹⁰ If the Commission, notwithstanding the lack of applicable precedent, remains concerned about pricing actions an eligible carrier may take between the time the Draft Business Data Services R&O and FNPRM is effective and the time of an election subsequent to May 2019, it can establish a rate-increase trigger which, if surpassed, would automatically cause the Commission to review closely, and possibly investigate, the going-in rates of carriers making the election after 2019.